IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 3673 OF 2003

IN

SUIT NO. 688 OF 2001

Mrs. Mukul H. Ghia
and anr. .....Plffs.
vs.
Kamalnayan H. Javeri
and ors. .....Defnds.

Mr.Bharat Vaishnawa, advocate for the plaintiffs.
Mr.Ketan Parekh a/w.s Ms. Mirasee i/b, Shah and Sanghavi for defendant no.1.
Mr. K.C. Nichani a/w. R.D. Dhanuka i/b. Anita Dhanuka for defendant no.2.
Mr.N.P. Shah i/b. M/s. Little and Co. for defendant no.3.

CORAM: S.U. KAMDAR, J.

DATE : 9th September, 2005.

P.C. :.

1. In this matter the jewellery which has been the subject matter of the Income Tax Raid has disappeared. The possession of the jewellery was

taken over by the Income Tax Authorities under a panchanama. It is an admitted position among all the parties that the said jewellery was taken over by the Income Tax authorities. It is the case of the income tax officer that the said jewelleries have been returned under the panchanama prepared by the Income Tax Authorities. The parties also admit that the Income Tax authorities have returned the said jewelleries.

2. The defendant no.1 and 2 in the present case are one Kamalnayan H. Javeri and Kalhans H. Javeri. The panchanama which has been produced by the Income Tax authorities before me indicates that the while preparing the panchanama the mother and one of the three defendants were present. The signature appearing on the panchanama was such that it cannot be identified whose signature it is. However at the bottom of the signature the name of Kamalnayan H. Javeri was present.

3. In this motion on 4.11.2004 the learned single

judge of this court passed an order directing to ascertain from the income tax department that who has taken the delivery of the said jewelleries. Learned single judge further directed that the officer of the Income-Tax department who handed over the jewellery should be made to remain present and identify whether the jewellery is collected by defendant no.1 or 2 and who have given acknowledgment of the receipt of the said ornaments. Pursuant to the same by various order I directed the Income tax officer to remain present. Accordingly the person who prepared the panchanama and handed over the jewellery is present. However at the relevant time the third defendant was not appearing in the court and by virtue of the fact that the signature indicated as 'K.J.' the needle of suspicion was on the defendant no.1 or defendant no.2 who has taken the jewellery from the Income Tax department. Both defendant no.2. and 3 denied having taken possession of the said jewellery. Subsequently pursuant to the orders passed a notice was issued to the third defendant who has also now remained present. Pursuant to the said notice the

Income tax officer W. M. Gangurde who has handed over the said jewellery is also present. The 3rd defendant has admitted that the signature on the panchanama is his and not of Kamalnayan Javeri. However he gives an explanation that the name of Kamalnayan S. Javeri is mentioned below the signature because at the time of taking possession of the said jewellery by the Income Tax department it was taken from the possession from the mother and Kamalnayan Javeri and since his name was appearing on the record of the income-tax department, the income tax department mentioned the name of Kamalnayan S. Javeri below his signature. He further states that though he was present at the time of taking delivery of the jewellery the possession of the jewellery is not taken by him but possession was handed over to the mother and it is the mother who has taken the possession of the jewellery. The mother has been residing with the 2nd defendant i.e. Kamalnayan H. Javeri. The 2nd defendant has also filed an affidavit and has stated that the mother was not having the jewellery when she was residing with him. As far as the

defendant no.1 is concerned, the defendant no.1 has stated that neither he was present at the time of taking possession of the jewellery nor the mother has been residing with him and therefore he is not in possession of the said jewellery. The mother has expired on 11.2.2000. The jewellery is not traceable and obviously it is with one of the defendant no.1, 2 and 3. In view of the aforesaid it has become necessary that an inquiry should be conducted as to in whose possession the said jewellery was after taking the possession from the income-tax authorities. The possession of the jewellery is taken on 14.12.99. The mother has expired on 11.2.2000 i.e. within a period of two months from taking possession of the said jewellery. In the aforesaid circumstances it has become necessary that further investigation should be ordered in the matter. All the parties appearing before me have no objection for investigation being carried out by the CID. In the light of the conflicting stand taken by defendant no.1, 2 and 3 pertaining to the possession of the said jewellery, it is necessary that the income-tax

authorities as well as the criminal Investigation Department should be directed to investigate the matter and ascertain that the jewellery is in whose possession after the taking over of the possession from the income tax authorities on 14.12.1999.

4. In view thereof the said motion is made absolute with the direction that the inquiry to be concluded by CID and Income Tax authorities to file their report in this court about the outcome of the investigation pursuant to this order within 6 months from today. The Income tax inquiry will be conducted by the second respondent in Motion No. 3673 of 2003. However liberty is granted to the parties to make necessary application after the necessary investigation report filed by the CID and Income Tax Authority. Motion disposed off accordingly. No order as to costs.

sd/-

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